

## Small Business Administration

## § 121.304

as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the Disaster Loan program, the SBIC program, and the New Markets Venture Capital (NMCV) program.

(b) For the Preferred Lenders program, size is determined as of the date of approval of the loan by the Preferred Lender.

(c) For disaster loan assistance (other than physical disaster loans), size status is determined as of the date the disaster commenced, as set forth in the Disaster Declaration. For economic injury disaster loan assistance under disaster declarations for Hurricanes Katrina, Rita, and Wilma, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before December 6, 2005, whether denied because of size status or pending, such applications shall be deemed resubmitted on December 6, 2005. For pre-disaster mitigation loans, size status is determined as of the date SBA accepts a complete Pre-Disaster Mitigation Small Business Loan Application for processing. Refer to § 123.408 of this chapter to find out what SBA considers to be a complete Pre-Disaster Mitigation Small Business Loan Application.

(d) For financial assistance from an SBIC licensee or an NMVC company, size is determined as of the date a concern's application is accepted for processing by the SBIC or the NMVC company.

(e) Changes in size after the applicable date when size is determined will not disqualify an applicant for assistance.

[61 FR 3286, Jan. 31, 1996, as amended at 64 FR 48276, Sept. 3, 1999; 67 FR 11880, Mar. 15, 2002; 67 FR 62337, Oct. 7, 2002; 69 FR 29204, May 21, 2004; 70 FR 72594, Dec. 6, 2005]

### **§ 121.303 What size procedures are used by SBA before it makes a formal size determination?**

(a) A concern that submits an application for financial assistance is deemed to have certified that it is small under the applicable size standard. SBA may question the concern's status based on information supplied in

the application or from any other source.

(b) A small business investment company, a development company, a surety bond company, or a preferred lender may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

(c) Size is initially considered by the individual with final financial assistance authority. This is not a formal size determination. A formal determination may be requested prior to a denial of eligibility based on size.

(d) An applicant may request a formal size determination when assistance has been denied for size ineligibility. Except for disaster loan eligibility, a request for a formal size determination must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. For disaster loan assistance, the request for a size determination must be made to the Area Director for the Disaster Area Office which denied the assistance.

(e) There are no time limitations for making a formal size determination for purposes of financial assistance. The official making the formal size determination must provide a copy of the determination to the applicant, to the requesting SBA official, and to other interested SBA program officials.

### **§ 121.304 What are the size requirements for refinancing an existing SBA loan?**

(a) A concern that applies to refinance an existing SBA loan or guarantee will be considered small for the refinancing even though its size has increased since the date of the original financing to exceed its applicable size standard, provided that:

(1) The increase in size is due to natural growth (as distinguished from merger, acquisition or similar management action); and

(2) SBA determines that refinancing is necessary to protect the Government's financial interest.

(b) If a concern's size has increased other than by natural growth, the concern and its affiliates must be small at

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the time the application for refinancing is accepted for processing by SBA.

### **§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?**

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

#### **SIZE ELIGIBILITY REQUIREMENTS FOR GOVERNMENT PROCUREMENT**

### **§ 121.401 What procurement programs are subject to size determinations?**

The rules set forth in §§121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, SBA's 8(a) Business Development program, SBA's HUBZone program, SBA's Service-Disabled Veteran-Owned Small Business program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

[70 FR 56814, Sept. 29, 2005]

### **§ 121.402 What size standards are applicable to Federal Government Contracting programs?**

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) The procuring agency contracting officer, or authorized representative, designates the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the NAICS

United States Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. Other factors considered include previous Government procurement classifications of the same or similar products or services, and the classification which would best serve the purposes of the Small Business Act. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.

(c) The NAICS code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns an NAICS code or size standard as provided in paragraph (d) of this section.

(d) An unclear, incomplete or missing NAICS code designation or size standard in the solicitation may be clarified, completed or supplied by SBA in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by an NAICS code designation or size standard designation may appeal the designations to OHA under part 134 of this chapter.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004]

### **§ 121.403 Are SBA size determinations and NAICS code designations binding on parties?**

Formal size determinations and NAICS code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]